SUPREME COURT, U. S.

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No. 73-930

In the Supreme Court of the United States

OCTOBER TERM, 1973

MARITIME COMMUNICATIONS SERVICE, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

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Petitioner Maritime Communications Service (MCS) seeks review of an order of the court of appeals entered on September 20, 1973, dismissing MCS' petition for review of an order of the Federal Communications Commission. The petition was dismissed for lack of jurisdiction because a notice of appeal had not been filed with the court within the thirty-day period required by statute, 47 U.S.C. 402 (b)(1) and 402(c) (Pet. 3).

The Commission's order, denying MCS' application for a new public coast radio station because the new

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station would cause mutually destructive interference with an existing station, was issued on April 3, 1973. On May 2, 1973, MCS filed a petition for review "pursuant to Section 402(b)(1) of the Communications Act" in the Court of Appeals for the Ninth Circuit, despite the fact that Section 402(b) specifies that such cases are exclusively within the jurisdiction of the Court of Appeals for the District of Columbia Circuit. By order dated May 31, 1973, the Ninth Circuit recognized that it was without jurisdiction and directed that the matter be transferred to the District of Columbia Circuit, without prejudice (Pet. App. A). Thereafter, in its order of September 20, 1973, the District of Columbia Circuit dismissed the petition for review (Pet. App. B).

The court correctly dismissed the case. The Act provides that a notice of appeal must be filed "with the court [of appeals for the District of Columbia Circuit] within thirty days from the date upon which public notice is given of the decision or order complained of" (47 U.S.C. 402(c)). MCS did not do so. Instead, it filed its appeal with the Ninth Circuit—a court without jurisdiction over the appeal—and the case was not transferred to the District of Columbia Circuit until after the time for filing had expired. Failure to file within the time and in the court specified by statute is a jurisdictional defect which requires dismissal of the case.

Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOHN W. PETTIT,
General Counsel,
Federal Communications Commission.

FEBRUARY 1974.

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